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DEPARTMENT OF COMMERCE

International Trade Administration

[Application 12-00002]

EXPORT TRADE CERTIFICATE OF REVIEW

ACTION: Notice of Application for an Export Trade Certificate of Review SunWest Foods, Inc.

SUMMARY: The Office of Competition and Economic Analysis, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (“Certificate”). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified

in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the *Federal Register*, identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments:

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked “privileged” or “confidential business information” will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, D.C. 20230, or transmitted by email at etca@trade.gov.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as “Export Trade

Certificate of Review, application number 12-00002.” A summary of the application follows.

Summary of the Application:

Applicant: SunWest Foods, Inc.
1550 Drew Avenue, Suite 150
Davis, California 95618

Application No.: 12-00002

Date Deemed Submitted: April 17, 2012

Members (in addition to applicant): SunWest Milling Company, Inc. (“SWM”) is to be a member that also will be covered by and receive the protections from the proposed Certificate. SWM’s principal address is 507 Bannock Street, Biggs, California 95917. SWM and SWF are both privately-held companies owned by the Errecarte family. SWM and SWF are affiliated through common ownership and management.

SunWest seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets:

Export Trade

Products: SWF proposes to export under the Certificate, directly and through other suppliers, rice and rice products, including, but not limited to: rough rice; brown rice; milled, under milled, and unpolished rice, coated rice; oiled rice; enriched rice; rice bran;

polished rice, head rice; broken rice; second head rice; brewers rice; screenings; and rice flour. The purpose and use of these foods products are for human consumption. The NAICS codes that best describes SWF's goods and services is 424490 (Other Grocery and Related Products Merchant Wholesalers). The NAICS Codes that best describe SWM's services are 311212 (Rice Milling) and 115114 (Postharvest Crop Activities).

Services: All services related to the export of Products

Technology Rights: All intellectual property rights associated with Products or Services, including, but not limited to: patents, trademarks, services marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and confidential databases and computer programs.

Export Trade Facilitation Services (as They Relate to the Export of Products):

Export Trade Facilitation Services, including but not limited to: consulting and trade strategy, converting harvest rice to marketable finished rice products via the drying, storage, milling, and packaging processes; arranging and coordinating delivery of rice and rice products to port of export; arranging for inland and/or ocean transportation; allocating rice and rice products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding; insurance and financing; documentation and services related to compliance with customs' requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; rice and rice products research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing;

provisions of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; development and application of management information systems; trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs (e.g., Export Enhancement and Market Promotion programs); collaborating with other rice suppliers and rice marketers; invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for rice and rice products; and arranging for payment of applicable commissions and fees.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

To engage in Export Trade in the Export Markets, SunWest Foods, Inc. and its affiliated company, SunWest Milling Company, Inc. (collectively “SunWest”) may:

1. Exchange information with Suppliers or other entities individually regarding availability of and prices for Products for export, and inventories and near-term

production and delivery schedules for purposes of determining the availability of Products for purchase and export, and coordinating export of Products with its distributors, customers, and other Suppliers in the Export Markets;

2. Confer with Suppliers about the possibility of offers to purchase and offers to sell by SunWest for specific export sales opportunities;

3. Process other Supplier's harvest rice to marketable finished Products for Export Markets via drying, storage, milling, and packaging processes;

4. Solicit other Suppliers to offer/sell Products to SunWest for subsequent sales into Export Markets;

5. Solicit other Suppliers to purchase Products from SunWest, but only to the extent such Products are then directly sold into Export Markets;

6. Solicit orders from potential foreign distributors and purchasers for sale of Products in Export Markets;

7. Prepare and submit offers of Products to potential foreign distributors, purchasers, and other entities for sale in Export Markets;

8. Establish the price and quantity of Products for sale in Export Markets and set other terms for any export sale;
9. Negotiate and enter into agreements for sale of Products in Export Markets;
10. Enter into agreements to purchase/sell Products from/to one or more Suppliers to fulfill specific sale obligations, which may include agreements whereby Suppliers agree to deal exclusively with SunWest, for sale of the Products in a particular Export Market or Markets and/or whereby SunWest agrees to purchase exclusively any particular Supplier's (or Suppliers') Products for resale in the Export Market;
11. Assign sales of Products to, and/or divide or share export orders among, Suppliers or other persons based on orders, export markets, territories, customers, or any other basis SunWest deems fit;
12. Broker and take title to the Products;
13. Enter into agreements with one or more Export Trade Intermediaries or export trade purchasers for the purchase of Products, which may be agreements whereby SunWest agrees to deal exclusively with an entity or customer in a particular Export Market, and/or by which that customer or intermediary agrees to deal exclusively with SunWest and/or agrees not to purchase from SunWest's competitors in any Export Market, unless so authorized;

14. Apply for and utilize government export assistance and incentive programs;
15. Refuse to (a) purchase Products, (b) sell Products, (c) provide services, or (d) provide information regarding export sales of Products to any Supplier(s) or other entities for any reason SunWest deems fit;
16. Refuse to (a) sell Products, (b) quote prices of Products, (c) provide services, (d) provide information regarding Products, or (e) market or sell Products to any customers or distributors in the Export Markets, or in any countries or geographic areas in the Export Markets; and
17. Meet with Suppliers or other entities periodically to discuss general matters specific to the activities approved in this Certificate (not related to price and supply arrangements between Applicant and the individual Suppliers) such as relevant facts concerning the Export Markets (e.g., demand conditions, transportation costs and prices in the export markets), or the possibility of joint marketing, bidding or selling arrangements in the Export Markets.

April 25, 2012
Date

Joseph E. Flynn, Director
Office of Competition and
Economic Analysis

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